

SUBDIVISION AND DEVELOPMENT POTENTIAL IN TETON COUNTY: THE FAMILY LOT-SPLIT EXEMPTION

In 2001 the Wyoming Legislature passed a law permitting individuals who own land outside of a platted subdivision to gift or sell a subdivided portion of the original property to an immediate family member.¹ This “family exemption” statute is especially interesting to families living in Teton County, where the price of land has escalated dramatically in the last ten years and there is very little private land left to develop. The statute allows families to further subdivide their property into smaller parcels without going through a subdivision or platting process with the County Planning Department.

Several families in Teton County have subdivided their properties as permitted by the statute. However, the Teton County Planning Department initially refused to recognize this family lot-split exemption and would not issue development permits for properties divided pursuant to the statute. In July 2004, the Wyoming Supreme Court held that the County must abide by the statutory exemption.²

The County is (legitimately) concerned about the evils of family lot-split subdivisions, such as inadequate roads, lack of utilities, and sub-standard sized lots. The County Commissioners considered adopting more stringent regulations than the statute called for. However, the Supreme Court ruled that the County has no authority to prevent the subdivision of land as provided by the statute. Additionally, more stringent regulations are not permitted, as they would render the family exemption statute meaningless. Nevertheless, the County is allowed to regulate the “use” of the subdivided lots by establishing zoning and regulatory standards for any development on those lots.

Since the *Pedro/Aspen* ruling the County Planning Department is processing building applications for lots created under the family exemption statute. So long as the newly created lots have adequate access and utilities, and meet all other regulatory standards, building permits

¹ The current version of W.S. § 18-5-303 states:

a) Unless the method of sale or other disposition is adopted for the purpose of evading the provisions of this article, this article shall not apply to any subdivision of land that:

(i) Is a division of land made outside of platted subdivisions for the purpose of a single gift or sale to a member of the landowner's immediate family, subject to the following requirements:

(A) A member of the immediate family is limited to any person who is a natural or adopted child, stepchild, spouse, sibling, grandchild, grandparent or parent of the landowner;

(B) The purpose of the division is to provide for the housing, business or agricultural needs of the grantee;

(C) Parcels created under this paragraph shall be titled in the name of the immediate family member for whom the division is made for a period of not less than one (1) year unless such parcels are subject to involuntary transfer including, but not limited to, foreclosure, death, judicial sale, condemnation or bankruptcy;

(D) No parcel smaller than five (5) acres created under this paragraph shall be further divided unless the owner obtains a subdivision permit pursuant to [W.S. 18-5-304](#).

² *Pedro/Aspen, Ltd. v. Board of County Com'rs for Natrona County*, 2004 WY 84, 94 P.3d 412 (Wyo. 2004).

will be issued. Approximately four building permits were issued for properties created by the family lot split statute in 2006.

In the 2007 legislative session, the Wyoming Legislature amended the family exemption statute, somewhat limiting its scope. First, the grantor must now own the land for at least 5 years before he or she can gift or sell it to an immediate family member. More importantly, however, is the provision that permits the County to adopt “requirements regarding documentation of the *proper use and implementation*” of the subdivided lots. This amendment goes into effect July 1, 2007.

On its face, this amendment merely requires additional paperwork- or “documentation” – confirming that the subdivided lots are deeded to immediate family members and have been held by the grantor for the appropriate length of time. However, there is a chance that the County will seek to prohibit additional family subdivisions by adopting stringent regulations concerning “proper use.”

According to one senior planner, the County is discussing how to address the statutory amendment. One consideration is to create a minimum lot size for a single family dwelling. However, this kind of regulation may render the statute meaningless, in contravention of the *Pedro/Aspen* ruling.

For now, the primary obstacle landowners face with respect to obtaining a building permit for a family lot split is access. The County is requiring that any access road meet County road design standards. Even this restriction, however, could be challenged, as it is difficult to conceive how road design standards could be considered a “use” which the County is allowed to regulate.

The family lot split exemption is a useful development tool for any county property located outside of a platted subdivision. Despite the County’s efforts to obtain greater regulatory authority over these subdivisions, the Wyoming Legislature is continuing to uphold this exemption and allow families to subdivide their properties in order to gift land to their children.